IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2170 of 2005

Date of Decision: 27.11.2007

Gurbinder Kaur alias Gurminder Kaur ..Petitioners

Vs.

Sukhdev Kaur ..Respondent

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Amarjit Markan, Advocate,
for the petitioner.

Vinod K.Sharma,J. (Oral)

Present revision petition has been filed against the orders passed by the learned courts below vide which application moved by the petitioner under Order 9 Rule 9 of the Code of Civil Procedure (for short the Code) seeking restoration of her suit dismissed in default has been ordered to be dismissed.

Plaintiff had brought a suit for declaration and after she had led her evidence she failed to appear on 7.5.1999 when the case was fixed for cross-examination of defendant's witnesses. Due to non-appearance of her or her counsel suit was dismissed in default on 7.5.1999.

The application was moved by the petitioner for restoration of the case on 23.9.1999 i.e. beyond the period of limitation and the said application was not accompanied by an application under section 5 of the Limitation Act.

The application filed by the petitioner was contested by the defendant respondents and on the pleadings of the parties the learned trial court was pleased to frame the following issues:-

1. Whether there are sufficient grounds to restore this suit dismissed on 7.5.1999? OPA
2. Whether the application is within limitation? OPA
3. Relief.

The learned trial court took up issues No.1 and 2 together and dismissed by the application by holding that the application was barred by limitation as the limitation prescribed for moving application was 30 days, whereas the present application was admittedly filed beyond the period of limitation.

In appeal the order passed by the learned trial court has been affirmed and it has been observed by the learned lower appellate court that under Order 9 Rule 9 of the Code limitation is to start from the date of passing of the order and not from the date of knowledge, as would be case under Order 9 Rule 13 of the Code. Consequently, it was held that as the application was barred by limitation, the same could not be entertained and consequently dismissed the appeal.

Learned counsel appearing on behalf of the petitioner has not been able to controvert the finding recorded by the learned courts below and has merely submitted that for the purpose of application for restoration he was merely to show that there existed sufficient cause for his non-appearance. This plea is not available to the petitioner as the application which is beyond limitation can only be entertained, when an application under section 5 of the Limitation Act is moved and the delay in filing the application is condoned on finding that here was sufficient cause for making the application, beyond period of limitation.

Thus, there is no error in the orders passed by the learned courts below nor the orders passed by the courts below suffer from jurisdictional error which may call for interference by this court under Articled 227 of the Constitution of India

Dismissed.

27.11. 2007 **(Vinod K.Sharma)**
rp **Judge**